

**REMARKS**

Claims 1-38 are pending in this application. Applicants thank the Examiner for his withdrawal of the restriction requirement originally applied in the Office Action dated March 3, 2003.

In the Office Action dated August 19, 2003, the Examiner rejected claims 3, 17 and 25-38 under 35 U.S.C. § 112, second paragraph, as failing to particularly point out and distinctly claim the subject matter that applicants regard as the invention. Regarding claims 3 and 17, the Examiner pointed out that the word “psychotropics” is misspelled. Regarding claims 25-38, the Examiner stated that claim 25, line 9 appears to have language missing from it, such that “cured coated substrate” has no antecedent. In response, Applicants have corrected the misspelling of the word “psychotropics” in claim 3 (the word appears to have been spelled correctly in claim 17) and have amended claim 25 to add the missing language so that the phrase “cured coated substrate” in line 9 has antecedent basis. The subject matter of the language added to claim 25 can be found in the specification, for example, at paragraph [0053], such that the added language does not constitute new matter. Applicants respectfully request that these rejections now be withdrawn.

The Examiner also rejected claims 1-38 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-25 of U.S. Patent No. 5,681,585 (Oshlack et al.). The Examiner stated that, although the conflicting claims are not identical, they are not patentably distinct from each other because the instant claims encompass the patented claims with respect to actives. In response, and for the purposes of expediting prosecution of the present application, Applicants submit herewith an executed Terminal Disclaimer in compliance with 37 C.F.R. § 1.321(c) over U.S. Patent No. 5,681,585 in order to obviate any obviousness-type double patenting issues with the present application. Applicants note that the obviation of an obvious-type double patenting rejection by the filing of a terminal disclaimer is not an admission, acquiescence or estoppel on the merits of an issue of obviousness. See Quad Environmental Technologies Corp. v. Union Sanitary District, 946 F.2d 870, 873-74, 20 U.S.P.Q.2d 1392, 1394-95 (Fed. Cir. 1991). Applicants request that this rejection now be withdrawn.

Furthermore, the Examiner rejected claims 4, 18 and 35 under 35 U.S.C. §101 because they claim the same invention as that of claims 1, 6 and 11 respectively of U.S. Patent No. 5,681,585. According to the Examiner, this is a double patenting rejection that cannot be overcome by filing a Terminal Disclaimer. In response, Applicants have amended claims 4, 18 and 35 of the present application to add a Markush group limitation to each, further defining the opioid analgesic, as set forth in the specification at paragraph [0047]. Claims 4, 18 and 35 as amended now do not claim the same invention as claims 1, 6 and 11, or any other claims, of U.S. Patent No. 5,681,585, and Applicants request that this rejection be withdrawn.

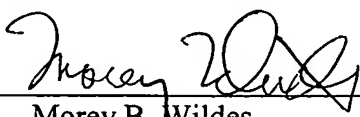
Applicants have also herein amended claims 1, 2, 7, 13 and 32 in order to correct a potential lack of antecedent basis in the claims for the terms "core" and "substrate". These amendments are made solely for purposes of clarification of the claims and in no way serve to narrow or expand the scope of the claims.

### **Conclusion**

Reconsideration of the present application, as amended, is requested. If, upon review, the Examiner is unable to issue an immediate Notice of Allowance, the Examiner is respectfully requested to telephone Applicant's undersigned attorney in order to resolve any outstanding issues and advance the prosecution of the case.

An early and favorable action on the merits is earnestly solicited.

Respectfully Submitted,  
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